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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO / OAKLAND DIVISION

MONTE RUSSELL, on behalf of himself
and others similarly situated,

Plaintiff,

v.

WELLS FARGO & CO.,

Defendant.

Case No. 07-3993 CW

**ADMINISTRATIVE MOTION TO
CONSIDER WHETHER CASES SHOULD
BE RELATED PURSUANT TO LOCAL
RULE 3-12**

The Honorable Claudia Wilken

MARTIN LEWIS and AARON COOPER,
on behalf of themselves and a class of
those similarly situated,

Plaintiffs,

v.

WELLS FARGO & CO.,

Defendant.

Case No. 08-2670 JCS

TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE, pursuant to Local Rules 7-11 and 3-12, Movants

Martin Lewis and Aaron Cooper, who are plaintiffs in *Lewis v. Wells Fargo & Co.*, Case No. 08-2670 JCS (N.D. Cal.) ("*Lewis*") respectfully request that *Lewis* (a) be deemed related to *Russell v. Wells Fargo & Co.*, Case No. 07-3993 CW (N.D. Cal.) ("*Russell*"), (b) be reassigned to Judge Wilken, who presides over *Russell*, which is the earlier-filed case, and (c) be coordinated with *Russell*. *Lewis* and *Russell* are related because "(1) [t]he actions concern substantially the same parties, property, transaction or event; and (2) [i]t appears likely that there will be an unduly burdensome duplication of labor and expense or conflicting results if the cases are conducted before different Judges." N.D. Cal. Civil L. R. 3-12(a). This Administrative Motion is supported by the Declaration of Jahan C. Sagafi and a Proposed Order, filed herewith.

In addition to this Administrative Motion, Movants are simultaneously filing a Notice Of Pendency Of Other Action Or Proceeding in the *Lewis* Case, pursuant to Local Rule 3-13. Chambers copies of that Notice as well as this Administrative Motion and supporting documents are being provided to the Courts in both *Lewis* and *Russell*.

I. ARGUMENT

A. *Russell* And *Lewis* Involve Substantially The Same Transactions, Events, And Parties.

First, both *Russell* and *Lewis* involve substantially the same transactions or events. Specifically, both cases involve allegations by classes of technical support workers employed by Wells Fargo & Company ("Wells Fargo") that Wells Fargo misclassified those classes of employees as exempt from the overtime pay requirements of the Fair Labor Standards Act, and that those classes of employees worked overtime hours for which they were not compensated. Wells Fargo's policies and procedures regarding exemption classification decisions, the organization of its Information Technology department (called Technology Infrastructure Group, or "TIG"), the nature of the work performed by TIG employees, and the overtime hours worked by TIG employees are among the issues central to the subject matter of both *Russell* and *Lewis*.

Second, both cases involve identical defendants (Wells Fargo).

1 Third, the two cases involve potentially overlapping plaintiff class populations,
2 because some individuals may fit within the class definitions of both cases. Specifically, the
3 *Russell* class is defined in relevant part as Wells Fargo employees nationwide who worked in the
4 Technology Information Group “with the primary job duties of providing computer support,
5 including persons with the job title ‘PC/LAN Engineers,’” and the *Lewis* class is defined in
6 relevant part as Wells Fargo employees nationwide who work or worked as “technical support
7 workers with the primary duties of installing, maintaining, and/or supporting computer software
8 and/or hardware, including but not limited to Network Engineers, but excluding PC/LAN
9 Engineers.” Movants believe that the classes include at least several hundred class members
10 each. Although the class definitions are non-overlapping, individuals who satisfy both class
11 definitions (i.e., they worked in both a PC/LAN Engineer position and a non-PC/LAN Engineer
12 technical support position during the appropriate class periods) would be class members in both
13 cases.

14 **B. Referral of *Lewis* To Judge Wilken Will Avoid Unduly Burdensome**
15 **Duplication Of Labor And Expense As Well As Conflicting Results.**

16 *Russell* and *Lewis* will involve significant labor and expense for the parties and the
17 Court, the duplication of which can be minimized by consolidation before Judge Wilken. For
18 example, discovery will likely involve overlapping issues, testimony, documents, and data based
19 on the overlapping factual issues and related plaintiff class populations involved, as outlined
20 above. Furthermore, communication between class counsel and the class members will be more
21 readily coordinated (and therefore more consistent and clearer for the class members) if the two
22 cases are proceeding in the same Court. Likewise, legal issues presented – such as the propriety
23 of class certification under the rubric set forth by the Fair Labor Standards Act (“FLSA”) and/or
24 Fed. R. Civ. P. 23, the determination of the appropriate FLSA statute of limitations, and the
25 ultimate liability question of the appropriateness of the classification of the *Russell* and *Lewis*
26 class members as exempt from the overtime pay requirements of the FLSA – will overlap
27 significantly. Resolution of these overlapping factual and legal questions by a single Court will
28

1 reduce the possibility of unduly burdensome duplication of labor and expense for the parties and
2 the Court. Thus, coordination will promote efficiency.

3 In addition, both cases will likely present substantially similar issues requiring
4 rulings that, if made independently, could result in conflicting determinations. Reassignment of
5 *Lewis* to Judge Wilken, who has already presided over *Russell* for close to ten months, will
6 facilitate the consistent determination of the legal questions raised in these related cases.
7 Conflicting rulings by two different Courts could result in confusion for class members
8 administrative difficulties for Wells Fargo, and delays in the adjudication of both cases. Thus,
9 coordination will promote consistency.

10 **II. CONCLUSION**

11 In sum, the parties and the Court would benefit from assignment of *Lewis* to Judge
12 Wilken, who presides over *Russell*, and coordination of the two cases. This will allow the parties
13 to conduct discovery expeditiously and efficiently, enable the Court to decide similar issues that
14 arise in both cases with consistency and efficiency, and facilitate the communication of case
15 status updates to class members.

16 For the reasons set forth above, Movants respectfully request that *Lewis* be
17 assigned to Judge Claudia Wilken and coordinated with *Russell*.

Respectfully submitted,

Dated: May 29, 2008

By: /s/ Jahan C. Sagafi
Jahan C. Sagafi

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